

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1713

IN THE MATTER OF:

Served June 22, 1977

Order Directing D. C. TRANSIT SYSTEM,)
INC., to Comply with Regulation)
Nos. 55-08 and 65-03)
-----)

Docket No. 294

Investigation to Determine the Nature)
of Joint Operations, if Any, between)
D. C. TRANSIT SYSTEM, INC., and)
WASHINGTON, VIRGINIA AND MARYLAND)
COACH COMPANY, INC., and Order Direct-)
ing Compliance)

Docket No. 320

BACKGROUND

By Order No. 1461, served October 17, 1975, Docket No. 294 was opened for the purposes of (a) directing D. C. Transit System, Inc. (D. C. Transit), to file its annual report for the calendar year ended December 31, 1974, and (b) determining whether D. C. Transit had charged members of the general public fares other than those in its then-current WMATC Tariff No. 46. 1/ Pursuant to Order No. 1461, a public hearing was held on November 26, 1975, at which time D. C. Transit merely argued that the filing of a new tariff would moot the question of compliance. The Commission, in Order No. 1482, served December 30, 1975, rejected this contention. Moreover, Order No. 1482 expanded the scope of the Commission's investigation to inquire with respect to the period July, 1973, to October, 1975, (i) whether D. C. Transit assessed fares other than those set forth in its WMATC Tariff No. 46, Supplement No. 1, (ii) whether D. C. Transit conducted any operations under its Certificate of Public Convenience and Necessity No. 5-A, and (iii) whether D. C. Transit conducted unauthorized operations in violation of Title II, Article XII, Section 4(a) of the Compact.

Following another public hearing, the Commission issued Order No. 1507, served February 27, 1976. Therein it was found that respondent D. C. Transit, on numerous occasions, had charged fares not specified in its tariff in violation of Title II, Article XII, Section 5(d) of the Compact and Commission Regulation 55-08 thereunder. The Commission further found, however, that these tariff violations were not willful and, accordingly, declined to suspend or revoke D. C. Transit's Certificate No. 5-A. 2/

1/ D. C. Transit subsequently filed the above-referenced annual report.

2/ Subsequently, D. C. Transit filed WMATC Tariff No. 46, Supplement No. 2.

The Commission also found that D. C. Transit had been commingling its individually-ticketed sightseeing passengers with those of a separate carrier, either on the carrier's own equipment or vehicles leased by D. C. Transit, and that no lawful joint tariff had been filed for these operations. Accordingly, respondent was ordered to cease and desist from such conduct. Additionally, D. C. Transit had been operating beyond the scope of its authority by conducting charter operations between points in the Metropolitan District. Respondent was therefore ordered to cease and desist from rendering any transportation services within the Metropolitan District other than the individually-ticketed sightseeing operations authorized in Certificate No. 5-A. An additional hearing was scheduled for the purpose of determining whether D. C. Transit had complied with the directives of Order No. 1507. 3/

Docket No. 320 was instituted by Order No. 1521, served March 17, 1976, for the purposes of directing D. C. Transit and its wholly-owned subsidiary, Washington, Virginia and Maryland Coach Company, Inc. (WV&M), to comply with the terms of Certificate Nos. 5-A and 4-A, and WMATC Tariff Nos. 46 and 40 and supplements thereto, respectively, and to determine what operations, if any, had been conducted under common ownership, management, operation or control in violation of Title II, Article XII, Section 12 of the Compact. A public hearing thereon was scheduled.

Finally, on May 3, 1976, D. C. Transit and WV&M filed a joint motion to consolidate both the above-described proceedings and the scheduled public hearings thereon, together with Application Nos. 938 and 939. 4/ Accordingly, a consolidated hearing was held on June 1, 1976.

THE PERTINENT FACTS

D. C. Transit appeared without counsel at the June 1, 1976, hearing, although prior to that date three attorneys had appeared on its behalf. D. C. Transit's vice president was aware that the company had a right to counsel, but stated that "[w]e [the company] didn't feel it was necessary to have counsel, and as I understand it, it is not required by the Commission

3/ On February 10, 1976, D. C. Transit filed Application No. 964 for certain temporary group charter and special operations authority, including some operations found to have been performed without appropriate authority therefor. Said application was denied by Order No. 1508, served February 27, 1976, petition for reconsideration denied by Order No. 1522, served March 26, 1976.

4/ On May 3, 1976, D. C. Transit filed Application No. 938 seeking revocation of its Certificate No. 5-A, and WV&M filed Application No. 939 seeking revocation of its Certificate No. 4-A. By motion filed May 27, 1976, D. C. Transit sought leave to withdraw its application and that motion was granted by Order No. 1564, served June 3, 1976. By Order No. 1640, served January 11, 1977, Certificate No. 4-A was revoked. Accordingly, these proceedings and the evidence relating thereto need not be further discussed.

to have counsel." Therefore, pursuant to Rule 3-01 of the Commission's Rules of Practice and Procedure, the vice president of D. C. Transit was allowed to appear on behalf of that corporation.

First, concerning operations of WV&M, 5/ D. C. Transit's vice president testified that WV&M operates one vehicle leased from D. C. Transit. Additional equipment, if needed, is acquired on a daily basis from either D. C. Transit or some other, unspecified, source. WV&M has no employees, and D. C. Transit's personnel conduct all of WV&M's operations, including maintenance, inspection and driving of vehicles. D. C. Transit pays the expenses for maintenance, repairs, insurance, garaging, fuel and drivers' salaries and benefits.

The comptroller for D. C. Transit testified that he was responsible for the preparation of books and records concerning WV&M. He further testified that WV&M's lease agreement with D. C. Transit provided that the latter would absorb all revenue and expenses of the former.

With respect to operations of D. C. Transit, that firm holds Certificate No. 5-A from this Commission authorizing individually-ticketed sightseeing operations. D. C. Transit's vice president testified that subsequent to March 6, 1976, charter operations were conducted only pursuant to ICC rights, involving movements originating at or destined to points beyond the Metropolitan District. In discussing several hypothetical movements, the witness clearly distinguished those which require ICC authority from those subject to the jurisdiction of this Commission. 6/

Prior to the issuance of the above-referenced cease and desist order of February 27, 1976, D. C. Transit admittedly was conducting charter operations within the Metropolitan District. Assertedly, such operations were provided after that date only pursuant to an agency agreement with Blue Lines, Inc. (Blue Lines), as principal. D. C. Transit's vehicles were used to provide the service, but they, assertedly, were not leased to Blue Lines. The witness testified that D. C. Transit would accept charter orders as an agent for Blue Lines, provide the service and collect money according to Blue Lines' tariff rates, and then be billed by Blue Lines for an amount not specified by the witness.

D. C. Transit's comptroller testified that he is responsible for the books and records of that corporation, and he sponsored four exhibits relating to D. C. Transit's income, expenses, equipment and financial status. Exhibit 1 is an income statement showing revenue and revenue deductions for April 1975,

5/ The revocation of WV&M's Certificate No. 4-A has not terminated the existence or operation of that corporation. The evidence of record indicates that WV&M will continue to hold operating authority from the Interstate Commerce Commission (ICC) and the Virginia State Corporation Commission.

6/ See transcript of June 1, 1976, pages 30 through 36.

April 1976, and the years 1975 and 1976 to date through the month of April. D. C. Transit shows \$188,535.53 in revenue derived from charter operations in April 1976, and \$507,411.88 for the first four months of 1976. 7/ These totals include income from three types of operations, intrastate, interstate and "D. C. local" which is defined by the witness as ". . . basically anything that is written up on a CSO [charter service order] that would be operated within the confines of the metropolitan area." Of the totals set forth above, the witness estimates that approximately 50 percent was income derived from "D. C. local" charter movements. By way of contrast, it is noted that corresponding revenues derived from individually-ticketed sightseeing operations, totaled \$1,316.70 and \$4,844.20, respectively. No underlying documents for these exhibits were tendered.

Subsequently, the staff of the Commission petitioned the Commission for a subpoena for certain books, papers and documents of D. C. Transit for the purpose of determining (1) the nature of that firm's agency agreement with Blue Lines, and (2) whether charter operations conducted by D. C. Transit were pursuant to a bona fide agency agreement or whether D. C. Transit was actually transporting passengers, in charter operations, between points in the Metropolitan District without appropriate authority therefor. Said subpoena was served on January 12, 1977, and the subject books, papers and documents were produced for inspection and photocopying by the Commission's staff on February 11, and February 14, 1977.

By Order No. 1655, served March 7, 1977, as amended by Order No. 1657, served March 9, 1977, hearing in the above-captioned matters was reconvened on Thursday, March 24, 1977. The limited purpose of the reconvened hearing was identification and consideration for receipt into evidence of certain documents produced in response to the above-described subpoena. 8/

At the reconvened hearing, D. C. Transit's vice president testified concerning the subpoenaed documents, and stated on direct examination that the photocopies thereof made by the Commission's staff are true and correct copies of the original documents. 9/ The witness also stated on direct examination that he was competent to testify concerning the content of the subpoenaed documents.

Certain correspondence was identified by the witness as being letters from Mr. Paul Swan of Blue Lines, to the witness, which were received by the

7/ Income earned by operations authorized by the operating rights of WV&M are included in these totals.

8/ D. C. Transit was represented by counsel at this hearing.

9/ One exception noted by the staff was a handwritten notation added to a letter of April 12, 1976. See Transcript of March 24, 1977, at page 35.

witness in the course of his employment as vice president of D. C. Transit and were read by him. As pertinent, a letter dated March 5, 1976, appoints D. C. Transit System, Inc., as sales agent for Blue Lines, Inc., with the rights ". . . to sell Group Charter Group Sightseeing, Transfers within the Metropolitan Area, and to collect deposit and money (sic) for Blue Lines." A subsequent letter, dated April 12, 1976, from and to the same parties recites in pertinent part: "Our agreement with D. C. Transit as Agent to sell local charter and groups (sic) for Blue Lines, Inc. in the Washington Area does not include the National Airport. * * * I am enclosing a new copy of our Certificate."

D. C. Transit's vice president testified that he examined Blue Lines' Certificate No. 10 in the first part of February 1976. 10/ He also examined Blue Lines' tariff for the purpose of determining what the appropriate rates would be to charge in D. C. Transit's agency capacity. 11/ It should be

10/ Blue Lines Certificate No. 10 authorizes the following charter and special operations.

IRREGULAR ROUTES:

(A) CHARTER OPERATIONS:

From points within the District of Columbia to points within the District of Columbia

(B) SPECIAL OPERATIONS:

Sightseeing or pleasure tours;

(1) From points within the District of Columbia to points within the District of Columbia

(2) From points within the District of Columbia to the City of Alexandria, Arlington County, and Mount Vernon, Fairfax County, Virginia, and return.

(3) From points within the City of Alexandria and Arlington County, Virginia, to the District of Columbia and return.

11/ Blue Lines WMATC Tariff No. 2, Supplement No. 2, issued September 9, 1975, and effective October 9, 1975, sets forth the following group charges.

<u>Bus (23 Passengers or Less)</u>	<u>Charter Service</u>	<u>Sightseeing Service</u>
Per Mile	.70¢	---
Per Hour	\$17.50	\$22.50
Minimum Charge - Four Hours		
Minimum Charge (Presidential Inauguration)		
Four (4) Consecutive Days of Eight (8) Hours		

noted that D. C. Transit's WMATC Tariff No. 46 contains no rates for charter or transfer service. 12/

11/ cont'd.

<u>Bus (24 Passengers or More)</u>	<u>Charter Service</u>	<u>Sightseeing Service</u>
Per Mile	.90¢	---
Per Hour	\$19.00	\$22.50
Minimum Charge - Four Hours of Garage Time		

Transfers

One-way between Any Two Points in the District of Columbia

Charge - \$45.00

Round Trip with a Minimum of Four Hours in between Each Transfer

Each Way - \$45.00

Blue Lines WMATC Tariff No. 2, Supplement No. 3, issued March 23, 1976, and effective May 3, 1976, "revised" charter and group sightseeing rates (but not transfer rates) as follows.

<u>Bus (23 Passengers or Less)</u>	<u>Charter Service</u>	<u>Sightseeing Service</u>
Per Mile	.70¢	---
Per Hour	\$17.50	\$22.50
Minimum Charge - Four Hours		
Minimum Charge (Presidential Inauguration)		
Four (4) Consecutive Days of Eight (8) Hours		

<u>Bus (24 Passengers or More)</u>	<u>Charter Service</u>	<u>Sightseeing Service</u>
Per Mile	.90¢	---
Per Hour	\$19.00	\$22.50
Minimum Charge - Four Hours of Garage Time		

Section II, paragraph 18 of Blue Lines WMATC Tariff No. 2 further provides that "a 10% discount will be allowed on all rates offered by the carrier when reservations for such services have been paid for in advance and placed at the office of the carrier."

Section II, paragraph 8 of Blue Lines WMATC Tariff No. 2 provides that "no agent or other employee shall have the authority to charge, or deviate from the fares, charges, rules and regulations contained therein."

12/ This tariff, Supplement No. 1, was in effect during the entire period at issue -- February 27, 1976, through June 1, 1976 -- and is still in effect as of this date.

The witness testified concerning 22 single page documents, identical in form and each headed "D. C. TRANSIT SYSTEM, INC. SERVICE ORDER". 13/ These service orders were prepared by respondent's employees in the normal course of D. C. Transit's business as a result of requests to D. C. Transit for service from some members of the public. Each service order shows, inter alia, the date on which the service was to be performed, the party who would be using the service, the locations at which the service would originate and terminate, the rate at which the service was billed, and the total cost of the service. In the event D. C. Transit was notified that such service was not to be performed, it was that company's standard business practice to note such alteration or cancellation on the face of the service order. No such notation appeared on any of the 22 service orders received in evidence in this proceeding.

The 22 service orders relate to transportation to be provided by D. C. Transit during the period February 27, 1976, through March 3, 1976, inclusive, and 18 of these service orders reflect on their face that such transportation was to be performed solely between points in the Metropolitan District. 14/ The rates charged for the service reflected on the face of these service orders are listed as "rate per vehicle", indicating that per capita fares were not charged. As noted above, D. C. Transit's effective tariff does not contain per-vehicle rates.

Eight service orders reflect that per-vehicle charges should be billed to "Close Up" and two service orders show charges to be billed to "Presidential Classroom for Young Americans". The Commission takes official notice of the fact that on January 21, 1977, D. C. Transit filed Application Nos. 978 and 979 for temporary authorities to conduct charter operations pursuant to contracts with A Presidential Classroom for Young Americans (Presidential) and Close Up Foundation (Close Up). The Commission also takes official notice of the verified evidence submitted by D. C. Transit in the above-referenced proceedings. 15/

13/ These documents, together with three one-page letters, comprised what was referred to at the hearing as Section I of Staff Exhibit No. 1.

14/ The remaining four service orders show destinations of "local as directed" or words of similar import. Accordingly, it cannot be determined from the face of the documents themselves that they relate to service between points in the Metropolitan District.

15/ A notarized letter dated January 25, 1977, from the Executive Director of Presidential to the Commission's General Counsel, states, in pertinent part, that

. . . for our 1975 program we sought proposals from other companies and after thorough review, selected D. C. Transit as the carrier. At the end of the six-weeks

D. C. Transit's witness also discussed the workings of that company's agency agreement with Blue Lines. The ordinary business practice of D. C. Transit was to first notify Blue Lines that charter service had been requested. If Blue Lines had equipment, the service was booked and operated with a Blue Lines vehicle and a Blue Lines driver; if Blue Lines could not handle the request, D. C. Transit provided the service with its own equipment and driver, ostensibly as an agent for Blue Lines. D. C. Transit collected the money for the service and Blue Lines would then be required to bill D. C. Transit for compensation.

The witness also testified concerning two invoices prepared by D. C. Transit regarding the agency account with Blue Lines. These invoices show that for April and May 1976, D. C. Transit collected on behalf of Blue Lines \$80,009.76 and \$49,579.02, respectively. They also show charges to Blue Lines for the lease of buses and drivers from D. C. Transit with which to perform some of these so-called agency operations. Lease charges for April 1976 were \$76,809.37 and lease charges for May 1976 were \$47,983.16. In each month, exactly 4 percent of the gross amount collected on behalf of Blue Lines was credited to Blue Lines' account.

The balance of Staff Exhibit No. 1 consists of 105 single-page documents captioned "Charter Coach Order Blue Lines, Inc." As explained by D. C. Transit's witness, each CSO was completed by an employee of D. C. Transit in the ordinary course of business after it had been determined that equipment

15 cont'd.

contractual period, we could, without reservation, state that they had not only lived up to their commitments, but had provided the Classroom with the best service we have ever had. Busses were on time . . . and the company responded to any special requirements or last minute changes quickly and efficiently.

A notarized letter dated January 25, 1977, from Close Up's Director of Programming to the Commission's General Counsel, states, as pertinent, that

We have been doing business with D. C. Transit since winter, 1975. * * * I am sure you know, there are very few companies in this area who have enough equipment to assign five coaches from there (sic) fleet to a program such as ours weekly. D. C. Transit was the only one we came across who was confident that they could service our needs through the winter and spring. * * * We have been very pleased with D. C. Transit these past two seasons D. C. Transit wants our business. They know our operation inside and out and they understand what good service means.

was available to provide the requested service. D. C. Transit's standard business practice is to write "cancelled" or some similar notation across the face of a CSO if, for some reason, the service described thereon is not performed. No such notation appears on any of the 105 CSO's admitted into evidence. The witness admitted that it would be a fair inference from the 105 CSO's that the transportation specified in those orders was performed and that the price charged for such service was that shown on the face of the CSO's. Each CSO describes service to be performed during the period April 1, 1976, through June 1, 1976.

Each CSO describes charter service originating and terminating at points in the Metropolitan District. Each CSO shows in the "Bill to:" section, the name D. C. Transit. That indicates, according to D. C. Transit's vice president, that D. C. Transit is performing the service with its vehicles and drivers. 16/ Each CSO shows that service originated at, was destined to, and/or extended to points in the Maryland or Virginia portions of the Metropolitan District. On 19 occasions, the CSO's indicate that D. C. Transit performed transfer operations between points in the Metropolitan District (but not solely within the District of Columbia), charging either \$68 or \$90 per transfer, usually less a 10 percent discount. 17/ No such transfer rate is shown in Blue Lines' tariff, see footnote 11, supra, and Blue Lines holds no such authority, see footnote 10, supra.

DISCUSSION AND CONCLUSIONS

First, it is clear that operations conducted under Certificate 4-A were those of D. C. Transit and not those of WV&M. The latter carrier obviously had no capability to perform any type of service and all control over such operations was exercised by D. C. Transit. The only intrusion by WV&M into this D. C. Transit operation are certain pro forma bookkeeping entries. D. C. Transit holds no authority to provide service in Virginia, and the conclusion that it was, in substance, conducting such operations without appropriate authority is inescapable. The Commission, on numerous occasions, has stated that a certificate of public convenience and necessity authorizes operations only by the carrier to whom such certificate is issued. The certificated carrier is responsible to the Commission and the public for its service and may not, without the approval of the Commission, delegate, lease, or otherwise avoid this responsibility. The certificated carrier, and only the certificated carrier, must control the service and the instrumentalities thereof. Here, D. C. Transit, as the owner of WV&M, clearly usurped such control in violation of Title II, Article XII, Section 12 of the Compact.

16/ See transcript of March 24, 1977, at page 74.

17/ See CSO Nos. 6465, 6709, 6606, 6723, 6799, 6892, 6890, 6902, 6928, 6842, 6908, 6939, 6846, 6759, 6664, 6674, 6259, 6754 and 6766.

Second, the Commission finds that during the period February 27, 1976, through March 3, 1976, D. C. Transit did knowingly and wilfully transport passengers, in charter operations, between points in the Metropolitan District, without there being in force either an appropriate certificate or tariff, in violation of the Compact, Title II, Article XII, Sections 4 and 5, in violation of Regulation 55-08, and in violation of the Commission's lawfully entered Order No. 1507 directing D. C. Transit to cease and desist from rendering such transportation. Contrary to the testimony of D. C. Transit's vice president, such operations were not, nor could they legally have been, conducted pursuant to ICC rights. While the Commission is mindful that the D. C. Transit service orders, standing alone, indicate only that such service was scheduled to be performed, consideration of the documents together with the explanatory testimony of respondent's vice president and comptroller clearly warrants the finding that such transportation as is described by said service orders was, in fact, performed by D. C. Transit. The Commission so finds.

Finally, with respect to D. C. Transit's operations during the period March 5, 1976, through June 1, 1976, the Commission also finds that D. C. Transit did knowingly and wilfully transport passengers, in charter operations, between points in the Metropolitan District in violation of the above-referenced sections of the Compact, Regulation 55-08 and Order No. 1507. Although such operations purportedly were conducted pursuant to an agency agreement, there has been no showing that Blue Lines exercised the control necessary to be considered the carrier providing the above-described services. It appears that Blue Lines' connection with D. C. Transit consisted primarily of a "right of first refusal" on charter service requests addressed to D. C. Transit. Based on the CSO's admitted into evidence and the explanatory testimony of D. C. Transit's vice president, the Commission concludes that a substantial quantity of charter service was provided by D. C. Transit, in D. C. Transit equipment and operated by D. C. Transit employees.

Moreover, each of the 105 CSO's admitted into evidence describes transportation extending beyond the territorial scope of Blue Lines' authority. Also, on at least 19 occasions the price to be charged for charter service was a rate other than that set forth in Blue Lines' tariff. Again, the Commission believes, and D. C. Transit's vice president admits, that it is a fair inference that such service was performed in the manner and at the price set forth on the CSO's and the Commission so finds. D. C. Transit's vice president stated that he examined Blue Lines' certificate and tariff, and he knew, or should have known, the scope of Blue Lines' operating rights and the appropriate charges therefor. Additionally, the lack of authority to serve Washington National Airport was specifically pointed out to D. C. Transit in the above-referenced letter of April 12, 1976, but D. C. Transit continuously thereafter provided service to and from Washington National Airport.

Considering the overall record of this carrier, as described herein, the Commission concludes that D. C. Transit has consistently failed to comply

with the mandates of the Compact and the Commission's lawful regulations and orders thereunder. By Order No. 1507, such obedience was commanded, and D. C. Transit has wilfully failed to comply with the provisions of said order. No explanatory or mitigating evidence was adduced to indicate that D. C. Transit's transgressions were motivated by anything other than a desire for revenue. Accordingly, the Commission finds that D. C. Transit is unfit and unwilling to conform its operations to pertinent regulatory requirements as mandated by the Compact, and further finds that Certificate No. 5-A of D. C. Transit should be revoked.

THEREFORE, IT IS ORDERED:

1. That Certificate of Public Convenience and Necessity No. 5-A of D. C. Transit System, Inc., be, and it is hereby, revoked.
2. That D. C. Transit System, Inc., be, and it is hereby, directed to cease and desist from engaging in the transportation for hire of persons between any points in the Metropolitan District.
3. That these proceedings be, and they are hereby, terminated.

BY DIRECTION OF THE COMMISSION:


GREGORY P. BARTH
Acting Executive Director

SHANNON: Commissioner, not participating.